



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 15, 2009

CBCA 1311-RELO

In the Matter of ERWIN WESTON

Erwin Weston, Caledonia, MS, Claimant.

Capt. Teah L. F. Lambright, Assistant Staff Judge Advocate, Headquarters 1st Fighter Wing, Department of the Air Force, Langley Air Force Base, VA, appearing for Department of the Air Force.

KULLBERG, Board Judge.

Claimant, Mr. Erwin Weston, seeks review of the denial of his claim in the amount of \$3724.80 related to the sale of his home at his previous duty station. The Department of the Air Force (USAF) contends that Mr. Weston's claim is for closing costs that were charged to the buyer, and he has neither proven that he incurred those costs nor that payment of such costs was reasonable and customary. For reasons stated below, the claim is denied.

Background

Mr. Weston, a USAF civilian employee, sold his home in Newport News, Virginia, as a result of his transfer to a new position at Columbus Air Force Base, Mississippi. In connection with the sale of his home, Mr. Weston and the purchaser executed a standard purchase agreement on August 1, 2007, in which Mr. Weston agreed to "pay \$10,000 (ten thousand) toward buyer[']s closing costs and prepaids." The Department of Housing and Urban Development (HUD) settlement statement (HUD-1) for the sale of Mr. Weston's home listed closing costs paid from the borrower's funds that included the following: loan

origination fee, \$2100; appraisal fee, \$350; and title insurance, \$1274.80. The HUD-1 also stated at line 209, “seller paid closing costs” in the amount of \$8392.79.

Subsequently, Mr. Weston submitted a claim for costs related to the sale of his home in the amount of \$19,642.25. The USAF denied his claim for the loan origination fee, appraisal fee, and title insurance, which totaled \$3724.80, in that there was no evidence that he paid those closing costs. Additionally, the USAF determined that even if Mr. Weston had paid those closing costs that were supposed to have been paid from the borrower’s funds, there was no evidence that payment of such closing costs by the seller was reasonable and customary.

Discussion

Mr. Weston contends that as part of the agreement to sell his home, he paid the buyer’s closing costs in the amount of \$8392.79, and he should be reimbursed for those buyer’s closing costs that were denied by the USAF. Under the Federal Travel Regulation (FTR), which is applicable in this case, the seller of a residence is entitled to reimbursement for those costs that are “customarily paid by the seller of a residence at the old official station” 41 CFR 302-11.200 (2007). The Joint Travel Regulations (JTR), which also apply to Mr. Weston, require that reimbursement of costs related to the sale of a home must be “[r]easonable in amount, and . . . [c]ustomarily paid by the seller . . . in the locality where the property is located.” JTR C5759-C.1. The General Services Administration Board of Contract Appeals, which previously decided relocation cases, recognized the following:

“An expense is ‘customarily’ paid if, by long and unvarying habitual actions, constantly repeated, such payment has acquired the force of a tacit and common consent within a community.” *Christopher L. Chretien*, GSBICA 13704-RELO, 97-1 BCA ¶ 28,701 (1996). The burden is on the claimant to show that a contested settlement cost meets this standard.

Monika J. Dey, GSBICA 15662-RELO, 02-1 BCA ¶ 31,744, at 156,827 (2001). In those instances where a seller agrees to pay some portion of the buyer’s closing costs, the seller can meet his burden of proof in the following manner:

[T]here are various ways in which to meet the burden of showing that it is “customary” for a seller to assume a particular cost. These include showing that a cost is allocated to a particular party in a preprinted sales form, submitting letters

from local realtors and brokers confirming that a particular cost is invariably assumed by the seller for the buyer, providing data showing that over the years a commanding percentage of sellers have contributed to buyers' closing costs, and the like. In contrast, letters from realtors simply asserting that many sellers contribute to buyers' closing costs do not establish that a practice is customary. *Dey*, 02-1 BCA at 156,827-28. A common occurrence does not necessarily rise to the level of a custom, although over time a custom may be determined to have evolved.

Joseph B. Wade, GSBCE 15889-RELO, 03-1 BCA ¶ 32,128, at 158,815-16 (2002).

Mr. Weston has not shown that payment of the buyer's closing costs at issue in this case was customary. The HUD-1 form for the sale of Mr. Weston's home showed that the disputed closing costs, which were the loan origination fee, appraisal fee, and title insurance, were to be paid from the borrower's funds. The electronic mail message from Heritage Title to Mr. Weston stated that he paid on the buyer's behalf closing costs in the sum of \$8392.79. In his letter to the USAF dated June 9, 2008, Mr. Weston stated that he had to reduce the price of his house by \$10,000 "just to stay competitive." Mr. Weston agreed to pay closing costs up to \$10,000 when he executed the purchase agreement. At most, Mr. Weston has established that he agreed to pay up to \$10,000 toward the buyer's closing costs as part of the terms for the sale of his home. A seller's agreement to pay some portion of the buyer's closing costs as part of the bargain to arrive at a sales price, however, does not establish that the payment of such closing costs was customary. *See Dey*. This Board finds, consequently, that Mr. Weston has not met his burden of proof in establishing that the payment of those closing costs on behalf of the buyer was reasonable and customary, and he is not entitled to reimbursement for such costs even if he paid them.¹

¹ The USAF also questioned whether the \$2100 loan origination fee was reimbursable if it was not part of the loan origination fee, but, instead, it was only an additional charge incident to the extension of credit. For purposes of deciding this case, however, the Board does not deem it necessary to address that argument in that Mr. Weston "has not established that the claimed costs are customarily paid by the seller, a basic requirement for all seller reimbursements." *Wade*, 03-1 BCA at 158,816 n.1.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge